

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	x MDL Docket No. 1500
IN RE AOL TIME WARNER, INC.	x 02 Civ. 5575 (SWK)
SECURITIES AND "ERISA" LITIGATION	x
	x
	x <u>MEMORANDUM OPINION</u>
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SHIRLEY WOHL KRAM, U.S.D.J.

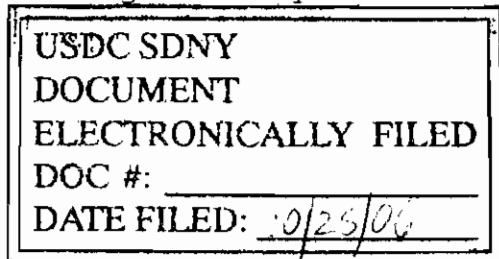
On September 29, 2006, David Pikus, the special master for attorney's fees, submitted his final report and recommendation ("R&R") to this Court and served the R&R on all relevant parties. Following the passage of a comment period that yielded only positive feedback, the Court now adopts the R&R.


Special Master Pikus recommends an award of \$147,500,000.00 in fees and \$3,417,237.51 in expenses. He reached this recommendation by employing a two-tiered percentage structure, which averages out to 5.9% of the common fund. This tiered percentage structure rewards class counsel for negotiating a settlement that more than doubled relevant industry predictions, despite the receipt of several smaller, yet compelling, settlement offers at earlier stages of negotiations, and reflects the intent of lead plaintiff's original fee agreement with class counsel. The recommended award, both as a percentage and in overall terms, properly rewards class counsel for their vigorous advocacy of the class's interests over four years of litigation. The Court was particularly impressed by the parties'

spirit of cooperation and civility during intensive settlement negotiations. The attorneys' exemplary behavior throughout the litigation decreased the burden on the judiciary and reduced the potential costs to their respective clients.

While Special Master Pikus rightly recommends an award that avoids recourse to a mere benchmark, it is notable that the averaged 5.9% award is within the range of percentage awards that have recently been approved by the courts of this Circuit in megafund settlements. See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d 96, 121, 123 (2d Cir. 2005) (approving a 6.5% award); In re Worldcom, Inc. Sec. Litig., 388 F. Supp. 2d 319, 353, 360 (S.D.N.Y. 2005) (awarding 5.5%). After considering the factors adopted in Goldberger v. Integrated Res., Inc., which have been thoroughly analyzed in the R&R, the Court finds Special Master Pikus's recommendation to be fair and reasonable. 209 F.3d 43, 50 (2d Cir. 2000) (citation omitted).

The administration of the award is to be carried out by reference to the accompanying Order approving the R&R and awarding attorney's fees and reimbursement of costs.




SHIRLEY WOHL KRAM
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
October 25, 2006